

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
OLUWASEUN ADELEKAN,  
Defendant.

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Case No. 1:19-cr-291

DEFENDANT OLUWASEUN ADELEKAN'S MOTION  
TO VACATE SENTENCE AND CONVICTION AND  
DISMISS FOURTH SUPERSEDING INDICTMENT  
WITH PREJUDICE

To The Honorable Judge of Said Court:

OLUWASEUN ADELEKAN, pro se, defendant, in the above styled and numbered cause hereby moves this Honorable Court to vacate his sentence and conviction and dismiss the Fourth Superseding Indictment in this case "with prejudice." In support of this motion defendant would show unto the Court as follows:

1. In **August 2018**, a Special Grand Jury was empaneled in the Southern District of New York to investigate Michael Cohen, Esq., former counsel for former President Donald Trump for possible violations of federal law including fraud and tax violations.
2. On **April 23<sup>rd</sup>, 2019**, the same Special Grand Jury returned an **Indictment** charging Oluwaseun Adelekan ("Adelekan") and others with attempt conspiracy to commit wire fraud, in violation 18, U.S.C., Sec. 1349; money laundering, in violation of 18, U.S.C., Sec. 1956; and aggravated identity theft, in violation of 18, U.S.C., Sec. 1028A.
3. On **September 9, 2021**, the same Special Grand Jury returned a **Fourth Superseding Indictment** charging Adelekan and other defendants with the same crimes but it amended in facts and added other codefendants.
4. On **October 26, 2021**, Adelekan was convicted by a jury on all counts charged in the **Fourth Superseding Indictment** and on **May 25, 2022**, he was sentenced as follows: **IMPRISONMENT**: 84 months on Counts One and Two and 24 months on Count Three to run consecutively for a total of **108 Months**; **SUPERVISED RELEASE**: 3 years on Counts One and Two and 1 year on Count Three to run concurrently; **ASSESSMENT**: \$300.00 due immediately; and **RESTITUTION**: **\$6,123,861.55**. On the Government's motion, the Court dismissed **Counts 1, 1s, and 2s**. The Court also entered **JUDGMENT** on the same date, **May 25, 2022**. (ECF # 516).
5. The assembly of a grand jury is governed by the **Federal Rules of Criminal Procedure**. The **Indictment** returned **April 23<sup>rd</sup>, 2019** and the **Fourth Superseding Indictment** returned **September 9<sup>th</sup>, 2021**, were both signed by the same person. A regular grand jury can only serve 24 months if

extended and a Special Grand Jury can only serve 36 months if extended. Once a Special Grand Jury is empaneled no other grand jury can be empaneled unless the first one is dismissed or expired.

6. By Law, a Special Grand Jury empaneled in **August 2018** "expired" in **August 2021** (36 months if extended); therefore, the **Fourth Superseding Indictment** returned by the Special Grand Jury on **September 9<sup>th</sup>, 2021** is "void ab initio" because the grand jury returning that indictment "expired" prior to returning same.

7. The Law in the Second Circuit is that an "indictment [is] invalid [if] the term of the grand jury had been improperly extended." United States v. Macklin, 523 F.2d 193, 194-95 (2<sup>nd</sup> Cir. 1975). The Second Circuit, also, holds that "an indictment handed down after the life of the grand jury had expired is a nullity" and "the absence of a [valid] indictment is a jurisdictional defect which deprives the court of its power to act." Id., at 196. The nullification of the **Fourth Superseding Indictment** "ab-initio" by the legal expiration of the Special Grand Jury empowers Adelekan to plead this Honorable Court to vacate his sentence and conviction in this case because the Court lacked the power to impose either the conviction or the sentence. Macklin, Id., at 196. Therefore, the **Judgment** entered in this case was and is "void ab-initio." See, United States v. Slape, 44 F.4<sup>th</sup> 356, 361 (5<sup>th</sup> Cir. 2022)("We have never held directly that an indictment returned by a defunct out of term grand jury is void-ab-initio, but at least two other circuits have, and we join those circuits in doing so today. Our determination that an out of term grand jury's indictment is void-ab-initio---meaning 'null from the beginning,' and therefore without legal effect---accords with the well established rule that a federal grand jury loses all legal authority at the conclusion of its term, which may run for maximum of twenty-four months.").

8. The investigation into the crimes charged in this case extended from a period of 2016 to 2019 ending with the return of the initial indictment on **April 23<sup>rd</sup>, 2019**. The Court dismissed the initial indictment on **May 25, 2022**, the same day it entered **Judgment**. With entry of the Court's Order dismissing the **Fourth Superseding Indictment**, there will be no pending charges against Adelekan in this judicial district. Given the fact that the five year statute of limitation indict has been exceeded in this case, the Court is respectfully requested to dismiss this case "with prejudice."

**WHEREFORE**, premises considered, this Honorable is respectfully requested to Grant this motion and dismiss this case "with prejudice."

Respectfully submitted,

  
Oluwaseun Adelekan

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss was served on counsel by depositing into the mail, first class postage-prepaid, said copy to:

Daniel Harris Wolf, Esq.,  
Assistant U.S. Attorney  
1 St. Andrew's Plaza  
New York, New York 10017

this 26<sup>th</sup> day of September, 2024.

  
Oluwaseun Adelekan

The Court construes Mr. Adelekan's motion as a writ of habeas corpus pursuant to 28 U.S.C. § 2255. Accordingly, the Clerk of the Court is directed to open a civil docket for the habeas action. The Clerk of the Court shall also close the open motion at dkt. no. 759.

SO ORDERED.

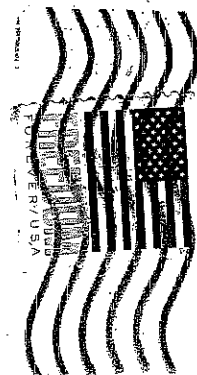
Date: 10/31/24

  
LORETTA A. PRESKA, U.S.D.J.

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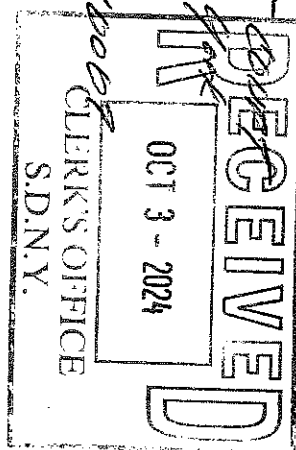
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USM<sub>P3</sub>  
SDNY

Criminal  
Jurisdiction

Clerk  
United States District  
Southern District of New York  
500 Pearl Street  
New York, New York 10007



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